SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-721

ORVAL M. RHODES and WILLIAM A. GUFFEY, as Co-Administrators of the Estates of MORIS O. RHODES and BEVERLY J. RHODES, Deceased,

Petitioners,

vs.

REPUBLIC NATIONAL LIFE INSURANCE COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Petitioners,	)
vs.	)
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Respondent.	)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Petitioners, ORVAL M. RHODES and WILLIAM A. GUFFEY, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on July 1, 1974.

Opinion Below

The opinion of the Court of Appeals, reported at 501 F.2d 1213, appears in the Appendix hereto. No opinion was rendered by the District Court for the District of Arizona.

Jurisdiction

The Judgment of the Court of Appeals for the Ninth Circuit was entered on July 1, 1974. A timely petition for rehearing was denied on September 12, 1974, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 *U.S.C.A.* § 1254(*1*).

Questions Presented

1. Should the Uniform Simultaneous Death Act be applied to construe otherwise ambiguous language of a life insurance policy and thereby cause a forfeiture of the maximum proceeds payable upon the death of the insured.

2. Should the Uniform Simultaneous Death Act be applied in a manner which determines the existence and amount of life insurance proceeds in an ambiguous life insurance contract upon the death of the insured as opposed to being utilized simply as a procedure or method of distribution of pre-existing or pre-determined life insurance proceeds.

3. Did the Court of Appeals for the Ninth Circuit by failing to harmonize the applicable simultaneous death statutes in the State of Arizona create a substantive presumption respecting the survival of the insured over the beneficiary which is contrary to the express language of other simultaneous death

statutes in Arizona where no such presumption exists.

Statutory Provisions Involved

TITLE 14

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> "Where the title of property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived except as provided otherwise in this Article."

A.R.S. § 14-224. *Community Property*

> "Where husband and wife died leaving community property, and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall pass as if the husband had survived and as if such one-half were his separate property and the remaining one-half of the community property shall pass as if the wife had survived and as if one-half were her separate property."

A.R.S. § 14-225. *Insurance Policies.*

"Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, but if the policy is community property of the insured and his spouse and there is no alternative beneficiary, or no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under Section 14-224."

A.R.S. § 14-226. *Article does not apply if decedent provided otherwise.*

"This Article shall not apply in the case of wills, living trusts, deeds or contracts of insurance, or any other situation where provision is made for distribution of property different from the provisions of this article, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided."

TITLE 20

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CHAPTER 5.--THE INSURANCE CONTRACT

ARTICLE 1. IN GENERAL

A.R.S. § 20-1127. *Simultaneous Deaths.*

"Where the individual insured or the annuitant and the beneficiary designated in a life insurance policy or policy insuring against accidental death or in an annuity contract have died and there is not sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy or contract shall be distributed as if the insured or annuitant had survived the beneficiary, unless otherwise specifically provided in the policy or contract."

Statement of the Case

This dispute arose over the interpretation of the terms of a life insurance policy insuring the life of Beverly J. Rhodes, deceased. The carrier, Republic National Life Insurance Company, (the Company) originally sold a policy to Moris O. Rhodes, deceased, the husband of Beverly J. Rhodes, on February 11, 1964. The Rhodes were residents of Arizona and the policy which was issued to Mr. Rhodes as well as all subsequent additions thereto was community property. Fourteen months after the original policy insuring the life of the husband had been issued, a rider was added to his policy known as "Wife's Insurance Benefit". This was effective April 10, 1965 and insured the life of Beverly J. Rhodes.

The applicable portions of the "Wife's Insurance Benefit" including the caption is set forth as follows:

"WIFE'S INSURANCE BENEFIT

FOR

ADDITIONAL INSURANCE OVER A TERM PERIOD

AND PAYABLE AS A MONTHLY INCOME TO THE END OF THE PERIOD OR UPON ELECTION AS A SINGLE PAYMENT, IF THE INSURED'S WIFE'S DEATH OCCURS DURING THE PERIOD

The Company agrees, subject to the terms and conditions of this Provision and the policy, to pay the following benefits immediately upon due proof of the death of the Insured's wife named in the application, while the policy and this Provision are in force:

1. For each unit of this benefit shown on page 3

   a. $1,000 payable immediately in one sum.

   b. If the wife has not attained age 50, a monthly income of $50 beginning at the date of the Insured's wife's death and payable at monthly intervals until the end of the month in which the Insured's wife would have attained age 50.

* * *

The Date of Issue of this Provision, which is the date the Term Period begins, and the date the Term Period ends are as specified on page 3 for this Benefit.

The Benefit under this Provision is payable in addition to any amount otherwise payable under the policy.

This Provision is made a part of the policy to which it is attached, in consideration of the application, a copy of which is attached to and made a part of the policy, and payment of the premiums

specified on page 3 applicable to this Benefit and the Life Insurance Benefit.

* * *

Payment of Proceeds

Any proceeds payable under this Provision because of the death of the Insured's wife will be paid to the Insured, if living, otherwise to the estate of the Insured's wife, unless otherwise provided. The payee may elect to receive the commuted value of such monthly income in one sum. The commuted value shall be computed by discounting the monthly income payable at 3% interest, compounded annually.

* * *

Benefit After Death of Insured

In the event of the Insured's death while the policy and this Benefit are in force, in place of all other benefits hereunder, the Company will issue to the Insured's wife a paid-up term life insurance policy in the amount of $1,000 Sum Insured for each unit of this Benefit shown on page 3, which will expire on the policy anniversary following the Insured's wife's 65th birthday.

Termination

This Provision will terminate without value, subject to the 'Exchange of Policy for a New Policy' Provision, upon the earliest of

a. The lapse, exchange or termination of the policy, or

b. The payment of application of the surrender value of the policy, or

c. The due date of the premium next

following receipt at the Company's Home Office of a request for discontinuance by written notice and presentation of the policy for adjustment, or

d. The date the policy becomes fully paid-up, or

e. The end of the Term Period."

On September 5, 1970, the Rhodes, together with their children, died in a flash flood near Payson, Arizona. There was no evidence to establish that the deaths were otherwise than simultaneous. The insurance policy contains no language regarding simultaneous death and the payment or lack of payment of the "Wife's Insurance Benefit" in the event of simultaneous death of the husband and wife.

The Company admitted liability on the Wife's Benefit Rider but limited its liability to $3,000 rather than the $26,625.30 claimed by the Administrators of the estate of Mr. and Mrs. Rhodes.

Suit was brought in the District Court for the State of Arizona seeking construction of the terms of the policy and requesting judgment for the greater amount of proceeds. The District Court found the "Wife's Insurance Benefit" insuring the life of Beverly J. Rhodes, deceased, to be ambiguous and directed an entry of summary judgment in favor of the Administrators of the Rhodes' Estate and against the Company for the full amount of the proceeds available.

The Court of Appeals although stating, "we concede that the policy should have been drafted with more clarity and that the Wife's Benefit Rider may be difficult to understand," and in the concurring opinion, ". . . I devoutly hope that this court's

ability, after much study, to make some sense out of the mindless draftsmanship we found here will not be interpreted by the insurance industry as 'approval' of the contract language which caused all this mischief", found the policy not ambiguous in its terms. The Court of Appeals felt the ambiguity arose only because of lack of knowledge concerning the order of death. The Court went on to apply *Arizona Revised Statute* § 20-1127 substantively and treated Beverly Rhodes as surviving Moris Rhodes her husband thereby entitling the plaintiffs to the lesser amount of insurance proceeds.

Reasons for Granting the Writ

1. THE DECISION BELOW RAISES SIGNIFICANT AND RECURRING PROBLEMS CONCERNING THE CONSTRUCTION OF AMBIGUOUS INSURANCE CONTRACTS.

The Court below has employed a state's Simultaneous Death Act to construe the otherwise ambiguous terms of an insurance contract to determine what proceeds should be payable under that contract. Such a use is novel and here applied in a case of first impression which intensifies the dangerous impact of this decision.

Previous decisions of this Court have consistently held that it is a cardinal principal of insurance law that a policy or contract of insurance is to be construed liberally in favor of the insured or his beneficiary and strictly against the insurer. *Aschenbrenner v. U. S. Fidelity & Guaranty Co.*, 292 U.S. 80 (1933) *reversing* C.C.A., *U. S. Fidelity & Guaranty Co. v. Aschenbrenner*, 65 F.2d 976,

cert. granted, 290 U.S. 622 (1933) and, *rehearing denied*, 292 U.S. 615 (1933); *Stipcich v. Metropolitan Life Ins. Co.*, 277 U.S. 311 (1927); *Liverpool & London & Globe Ins. Co. v. Kearny*, 180 U.S. 132 (1901). Stated more fully the rule is that, "whereby reason of ambiguity in the language employed in a policy or contract of insurance, there is *doubt* or *uncertainty* as to its meaning and is fairly susceptible of two interpretations, one favorable to insured or his beneficiary and the other favorable to the company, the former will be adopted, even though it was the intention of the insurer that the policy or a particular clause or provisions thereof, should have a different meaning; and this rule is especially applicable where the ambiguity or doubt relates to the matters subsequent to the loss or the attaching of liability." 44 C.J.S. *Insurance* § 297, at 1167. (Emphasis supplied).

Other decisions of the Court below have affirmed that rule; "it is settled law that when any provision of an insurance policy is subject to more than one reasonable interpretation, that interpretation which favors the insured is adopted, since the insurer authors the contract of insurance . . . What controls is not the interpretation of the individual words which are not defined in the policy itself, but the interpretation which the *ordinary man* would give to the phrase as a whole taken in the context of the whole policy and the *average man's knowledge* of the way insurance is set up." *Prudential Ins. Co. of America v. Barnes*, 285 F.2d 299, 300 (9th Cir. 1960, Ariz.) (Emphasis supplied).

In the policy in question, no mention is made as to the payment of proceeds in case of simultaneous death. The contract is ambiguous as to what amount is payable in that instance. The caption which is in bold faced type states that the benefit is: "ADDITIONAL INSURANCE OVER A TERM PERIOD AND PAYABLE AS A MONTHLY INCOME TO THE END OF THE PERIOD OR UPON ELECTION AS A SINGLE PAYMENT IF THE INSURED'S WIFE'S DEATH

OCCURS DURING THIS PERIOD". Under the payment of proceeds section, it states:

> "Any proceeds payable under this Provision because of the death of the insured's wife will be paid to the Insured, if living, otherwise to the estate of the Insured's wife, unless otherwise provided."

There is no other provision made contrary to this. The Court below failed to consider how a reasonable man might read those provisions, especially in light of the fact that a premium on $30,000 worth of insurance was being paid and that a physical examination was required of the wife because the proceeds applied for were in excess of $30,000.

Instead of affirming the obvious ambiguity of the contract, construing it against the insurer and declaring full benefits due, the Court below used a tool historically applied in channeling the proceeds of an insurance contract *after* they had been determined, to construct what the Court wanted to believe the policy was meant to pay as proceeds irrespective of how the insured may have believed the proceeds were to be paid. Such use of Simultaneous Death Act is a very dangerous precedent to set in that an insurance contract can now become more than is shown on its face. The sophisticated and resourceful insurance company can now rely on statutes otherwise mystical and hidden to the insurance purchaser to limit coverage while charging a disproportionate premium based upon what the insurance contract *appears* to provide as benefits.

Contrary to the opinion of the Court below, its use of the Simultaneous Death Act is contrary to any other decisions of that Court or other Appellate Courts. The cases cited by the Court (pages 7 and 8 of appended Opinion) deal with the use of a

Simultaneous Death Act in establishing ownership interests in the insurance policy for estate tax purposes, not construing the ambiguous terms of those policies to determine the actual amount of proceeds payable. Such an application has far less damaging effect than what occurs in this instance and while in theory such an application may appear to be a logical step in the progressive extention of the use of such a statute, petitioners respectfully urge that it is a step too near the brink of disaster for insurance law in the United States if allowed to remain a valid precedent.

The Court stated that it could not carve out an artificial exception to a well recognized statutory interpretation. What it has done in effect is to carve out a large loophole through which insurance companies may drive their premium trucks loaded with unpaid benefits which they have obtained from the public as a result of this lower Court's ruling which can now be used to protect their "mindless draftmanship" of insurance contracts.

As was noted, the Court gave little, if any, recognition of the statutory scheme which had been enacted in Arizona respecting distribution of money and property following death including insurance proceeds nor the fact that the policy in question was community property. The Court did nothing to harmonize the Arizona statutes. The applicable statute which should have been applied is *A.R.S.* § 14-225, INSURANCE POLICIES. It provides after recognizing that the proceeds of the policy shall be distributed as if the insured had survived the beneficiary,

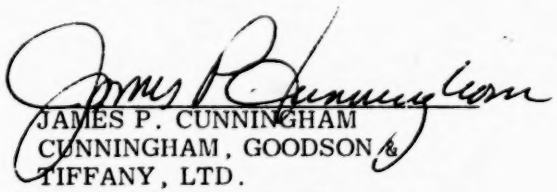
> ". . . but if the policy is community property of the insured and his spouse and there is no alternative beneficiary, or no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under §14-224."

It is not possible from this language to find a conclusive presumption that the insured survived the beneficiary since it is expressly otherwise provided if the policy is "community property". The opinion of the Court by not recognizing this statute leaves the law of Arizona and any other community property state which may have such a statutory scheme, in a state of confusion.

Conclusion

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,



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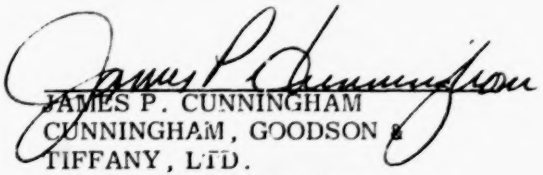
[APPENDIX FOLLOWS]

Certificate of Service

I, JAMES P. CUNNINGHAM, do hereby certify that on this the 6th day of December, 1974, three (3) copies of the Petition for Writ of Certiorari, in final printed form, were mailed, postage prepaid, to ROBERT W. HOLLAND, 1400 United Bank Building, 3550 North Central Avenue, Phoenix, Arizona 85012, Counsel for the Respondent. I further certify that all parties required to be served have been served.



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(CORRECTED OPINION)

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ORVAL M. RHODES and WILLIAM A. GUFFEY, as Co-Administrators of the Estate of MORIS O. RHODES and BEVERLY J. RHODES, Deceased,
Plaintiffs-Appellees,
vs.
REPUBLIC NATIONAL LIFE INSURANCE COMPANY,
Defendant-Appellant.

No. 72-2505

OPINION

[July 1, 1974]

Appeal from the United States District Court
for the District of Arizona

Before: CARTER, GOODWIN and WALLACE, Circuit Judges.

WALLACE, Circuit Judge:

The administrators of the estates of Moris O. Rhodes and Beverly J. Rhodes, deceased, sought a declaratory judgment as to the correct construction of a life insurance policy issued by Republic National Life Insurance Company (the Company) through its predecessor, Pacific National Life Assurance Company. The Company admitted coverage, but argued that its liability was limited to $3,000, rather than $26,625.30 as claimed by the administrators. The district court granted the administrators' motion for summary judgment and entered judgment against the Company in the amount of $23,625.30. The Company appeals and we reverse.

On February 11, 1964, Moris Rhodes entered into a contract of life insurance with the Company (the Husband's Policy). Under the policy the Company was liable, upon proof of Mr. Rhodes' death, for a lump sum and for a monthly income benefit until the end of the protection period. In April, 1965, the policy was amended by the addition of a rider entitled "CHILDREN'S

BENEFIT FOR TERM INSURANCE TO AGE 25" (the children's Benefit Rider) under which the life of each of Rhodes' three children was insured for a lump sum. The Company has settled its liability under the Children's Benefit Rider and Mr. Rhodes' policy and they are discussed here only as background. In April, 1965, the Husband's Policy was also amended by the addition of a rider entitled "WIFE'S INSURANCE BENEFIT" (the Wife's Benefit Rider). The correct construction of this rider is the subject of this dispute. On September 5, 1970, the Rhodes, together with their children, perished in a flash flood near Payson, Arizona. There was no evidence that their deaths were otherwise than simultaneous.

The Wife's Benefit Rider is captioned by the following:

> WIFE'S INSURANCE BENEFIT FOR ADDITIONAL INSURANCE OVER A TERM PERIOD AND PAYABLE AS A MONTHLY INCOME TO THE END OF THE PERIOD OR UPON ELECTION AS A SINGLE PAYMENT, IF THE INSURED'S WIFE'S DEATH OCCURS DURING THE PERIOD

The benefit paragraph of the rider reads as follows:

> The Company agrees, subject to the terms and conditions of this Provision and the Policy, to pay the following benefits immediately upon due proof of the death of the Insured's wife named in the application, while the policy and this Provision are in force:
>
> 1. For each unit of this benefit shown on page 3 [3 units]
>
> a. $1,000 payable immediately in one sum.
>
> b. If the wife has not attained age 50, a monthly income of $50 beginning at the date of the Insured's wife's death and payable at monthly intervals until the end of the month in which the Insured's wife would have attained age 50.
>
> 2. If a Children's Benefit is attached to the policy, it will be continued in force as fully paid-up term insurance to the child's 25th birthday.
>
> . . . .
>
> The Benefit under this Provision is payable in addition to any amount otherwise payable under the policy.

This Provision is made a part of the policy to which it is attached, in consideration of the application, a copy of which is attached to and made a part of the policy, and payment of the premiums specified on page 3 applicable to this Benefit and the Life Insurance Benefit.

The benefits are limited by the following paragraph:

Benefit After Death of Insured

In the event of the Insured's death while the policy and this Benefit are in force in place of all other benefits hereunder, the Company will issue to the Insured's wife a paid-up term life insurance policy in the amount of $1,000 Sum Insured for each unit of this Benefit shown on page 3, which will expire on the policy anniversary following the Insured's wife's 65th birthday.

Upon the wife's death, the proceeds are to be paid according to the following paragraph:

Payment of Proceeds

Any proceeds payable under this Provision because of the death of the Insured's wife will be paid to the Insured, if living, otherwise to the estate of the Insured's wife, unless otherwise provided. The payee may elect to receive the commuted value of such monthly income in one sum. The commuted value shall be computed by discounting the monthly income payable at 3% interest, compounded annually.

The administrators argue that these paragraphs are ambiguous and, thus, under well-established principles [*see, e.g., Liverpool & London & Globe Ins. Co. v. Kearney*, 180 U.S. 132, 136 (1901); *Pacific Mut. Life Ins. Co. v. Young*, 40 Ariz. 1, 10, 9 P.2d 188, 191 (1932)] we are required to construe the language against the Company and in favor of insurance coverage. As ambiguities, they point to the fact that the caption does not condition the payment of the monthly benefit upon the survival of the husband, that the benefit is payable in addition to any amounts otherwise payable under the policy, that the payee may be the wife's estate if the insured is not living (indicating that the Company contemplated that the husband might predecease the wife) and that

the policy does not provide that the death of the insured prior to the death of the wife is one of the conditions which terminates the benefit.

Although we concede that the policy should have been drafted with more clarity and that the Wife's Benefit Rider may be difficult to understand, when it is viewed as part of a package providing insurance protection for the whole family, the paragraphs are not ambiguous. Under the Husband's Policy, the wage-earner's life was insured to protect the other members of the family in the event of his death. Under that policy the Company agreed to pay to the wife, upon proof of the husband's death, a lump sum plus a monthly income until the end of the period when the children would normally be expected to have become independent. Thus, the wife was protected with a lump sum to cover burial and other immediate expenses and with a monthly income during the years she would have been responsible for the young children.

Under the Children's Benefit Rider the Company agreed to pay the husband, upon proof of a child's death, a lump sum, thus protecting the family from death and burial expenses. Under the Wife's Benefit Rider the Company agreed to pay the husband, upon proof of the wife's death, a lump sum, protecting against burial and death expenses, plus a monthly income until the time when the wife would have reached age 50. Thus, the husband was assured that in the event of his wife's death he would have been able to continue to work and also would have been able to hire a housekeeper and to provide for child care until the children would have become independent. The monthly income coverage, however, was conditioned upon the husband surviving the wife. This is logical since if the husband had predeceased the wife, the children would have received the benefit from the monthly income under the husband's policy. An additional monthly income under the Wife's Benefit Rider would have been double protection. Thus, if the husband had predeceased the wife, the Company under the alternative coverage of the Wife's Benefit Rider would have issued her a paid-up term policy to pay a lump sum at her death, which could have been used for death and burial expenses. The paid-up term life would have expired when she would have reached age 65.

The language of the Wife's Benefit Rider, when viewed in this light, is not ambiguous. Although the caption does not contain any conditions, the first sentence of the first paragraph provides that the Company shall pay the benefits "subject to the terms and conditions of this Provision [the Wife's Benefit Rider] and the policy . . . ." One of the conditions is that if the husband predeceases the wife, the Company will issue "in place of all other benefits hereunder" a paid-up term life insurance policy for a lump sum. Consistent with this condition, the paragraph providing for the payment of the proceeds provides that if the husband has predeceased the wife, the proceeds, which would then be only the lump sum, shall be paid to the estate of the wife. It is only natural that the Company would contemplate the prior death of the husband and provide both for a reduction in coverage and for a contingent beneficiary; but that does not make ambiguous the paragraph which reduces the coverage by terminating the monthly income benefit. The clause making the benefit under the Wife's Benefit Rider payable in addition to the other benefits under the policy can reasonably refer only to the benefits under the Husband's Policy and the Children's Benefit Rider. Finally, the policy does not provide that the death of the husband prior to the wife's death terminates the benefit because his prior death only alters the scope of the wife's coverage; it does not completely terminate the benefit. We hold that, when viewed as part of a family insurance package, the Wife's Benefit Rider is not ambiguous.

The ambiguity in this case arises only because of the lack of evidence concerning the order of death. The policy does not provide for this contingency; but an Arizona statute does and the parties must be presumed to have contracted with knowledge of the existing statutes. *Broenen v. Beaunit Corp.*, 440 F.2d 1244, 1249 (7th Cir. 1970); *In re Clise's Estates*, 64 Wash.2d 320, 322, 391 P.2d 547, 549 (1964). Arizona Revised Statute § 20-1127 reads:[1]

[1]Ariz. Rev. Stat. § 14-2808, dealing with the succession of estates, is similar to section 20-1127:

> Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary,

> Where the individual insured or the annuitant and the beneficiary designated in a life insurance policy or policy insuring against accidental death or in an annuity contract have died and there is not sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy or contract shall be distributed as if the insured or annuitant had survived the beneficiary, unless otherwise specifically provided in the policy or contract.

The Company argues that under this statute Beverly, as the person insured under the Wife's Benefit Rider, must be presumed to have survived her husband, the beneficiary. Thus, the Company argues, at the presumed moment of the wife's death only the reduced benefit was in effect and the Company is liable only for $3,000.

The administrators answer by arguing first that the terms of the statute must be given the same meaning as the terms of the policy. Accordingly, they argue, that since Moris is defined as the "insured" in the Husband's Policy and since he is referred to as the "insured" in the Wife's Benefit Rider, he must also be deemed to be the "insured" under the statute. Thus, the administrators conclude that the husband should be presumed to have died last, entitling the estate to the commuted value of the monthly income.

This argument is spurious. The terms of the statute must be given their usual meaning, unless they are specifically defined otherwise within the statute. *Malat v. Riddell*, 383 U.S. 569, 571 (1966). The term "insured" as used in the statute can only refer to the person whose death triggers the Company's liability for the benefits provided by the policy. *See In re Clise's Estates*, 64 Wash.2d at 323, 391 P.2d at 549. Under the Wife's Benefit Rider this person was Beverly.

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but if the policy is community property of the insured and his spouse and there is no alternative beneficiary, or no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under [section 14-2807].

Since the issue in this case deals primarily with a question of insurance rather than succession, we have applied section 20-1127.

The administrators next argue that section 20-1127 does not apply in this case, thus creating an ambiguity that must be resolved in favor of coverage. They reason that the purpose of the simultaneous death act is only to control the distribution of insurance proceeds over the Company's liability has been established, not to aid in determining whether the company is liable in the first instance. They have not cited any authority for this position.

Although there is some merit to their argument, we do not believe we can adopt it primarily because we have already elected to apply a similar simultaneous death act in determining whether a decedent owned, at the time of her death, a property interest in a policy on her husband's life. In *Estate of Chown v. Commissioner*, 428 F.2d 1395 (9th Cir. 1970), we held that a life insurance policy owned by a wife on the life of her husband must be valued for estate tax purposes according to a theory that uses the life expectancy of a man of the husband's age (interpolated terminal reserve value) without consideration of the fact that there was no evidence that the husband died otherwise than simultaneously with the wife. In order to reach the question of valuation we had to conclude that the wife at the time of her death held sufficient incidents of ownership to require that the policy be included in her gross estate.[2] If the husband had predeceased her or had died simultaneously with her, she would not have held any of the required incidents of ownership since her right to change the beneficiary, to surrender the policy, to borrow on it or to assign it would have been extinguished at the death of the insured. *Estate of Wien v. Commissioner*, 441 F.2d 32, 35 (5th Cir. 1971). In assuming that Mrs. Chown held the required incidents of ownership, we relied upon the Oregon Uniform Simultaneous Death Act[3] under which, for purposes of distributing the proceeds, the beneficiary is presumed to have predeceased the insured. Thus, we held that the insurance policy had to be valued

[2]Int. Rev. Code of 1954, § 2042.

[3]The statute involved in *Chown* provided:

> Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

428 F.2d at 1396.

as if the wife had preceded the husband in death. 428 F.2d at 1397.

Three other circuits, also relying upon simultaneous death acts, have reached this same conclusion. *Estate of Wien v. Commissioner*, 441 F.2d 32 (5th Cir. 1971); *Estate of Meltzer v. Commissioner*, 439 F.2d 798 (4th Cir. 1971); *Old Kent Bank & Trust Co. v. United States*, 430 F.2d 392 (6th Cir. 1970). In *Estate of Wien v. Commissioner*, the Fifth Circuit, after reviewing the purpose of the simultaneous death act, stated:

> Consequently, Ellen, as the owner-beneficiary of the policies on Sidney's life, is treated for property purposes as if Sidney still survived at the instant of her death. Since it is Sidney's death alone which could have caused the extinguishment of Ellen's ownership rights, it is clear that under state law Ellen's ownership rights were intact and in her estate at the moment of her death.

441 F.2d at 36. The court explained that in determining questions of ownership of property for purposes of taxation it must apply state law and stated:

> Applying these principles to the instant case we conclude that Ellen, as the owner-beneficiary of policies insuring Sidney's life, had under Georgia law at the time of her death an ownership interest which was a valuable property right, and that the value of this interest must be included in her estate under § 2033.

441 F.2d at 37. In *Wien*, the Fifth Circuit did expressly what we did implicitly in *Chown;* it relied upon the simultaneous death act to conclude that the decedent had an ownership interest in the insurance policy at the time of death.

We recognize that under the simultaneous death act the insured is not presumed to have survived the beneficiary for all purposes, but only that the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. Indeed, in *Wien* the Fifth Circuit stated that "the application of that act is not tantamount to a finding that the parties in fact died simultaneously. Rather, the application of the act . . . simply makes the actual order of death irrelevant and mandates that the property be dis-

posed of as if the insured survived the beneficiary." 441 F.2d at 39. But if we were to construe the act to be applicable only once the insurance company's liability is established, we would have to ignore the fact that we and the other circuits have relied upon the act for determinations other than the distribution of proceeds. To do so, we would need to carve out an artificial exception to a well-recognized statutory interpretation. This we are not justified in doing. In addition, by so limiting the application of the act we would limit its usefulness in resolving problems of construction when the parties fail to anticipate such contingencies in advance.

We conclude, therefore, that the Wife's Benefit Rider must be construed as if Moris had predeceased Beverly, thus reducing her coverage to include only a paid-up term life policy for a lump sum of $3,000.

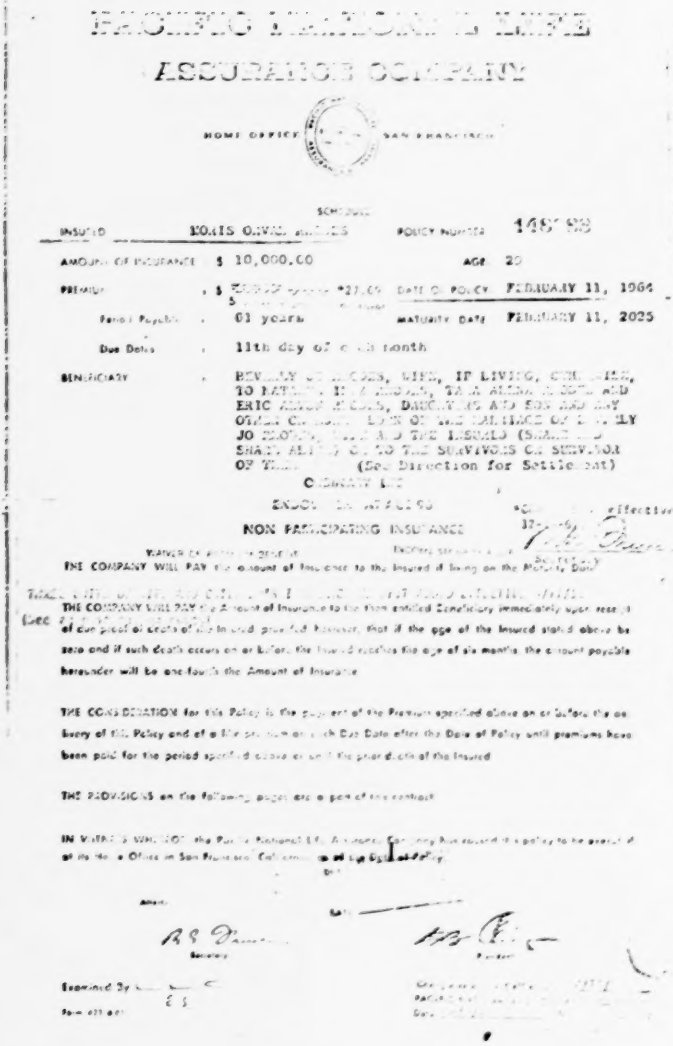
REVERSED.

GOODWIN, Circuit Judge, specially concurring:

I agree with the reasoning, and concur in the opinion of the court. But I devoutly hope that this court's ability, after much study, to make some sense out of the mindless draftsmanship we found here will not be interpreted by the insurance industry as "approval" of the contract language which caused all this mischief.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO 7-8-74—480

Appendix 2



PACIFIC MUTUAL LIFE
ASSURANCE COMPANY
HOME OFFICE SAN FRANCISCO

SCHEDULE

INSURED LOUIS OLIVAS POLICY NUMBER 148[illegible]

AMOUNT OF INSURANCE $ 10,000.00 AGE 20

PREMIUM $ [illegible] DATE OF POLICY FEBRUARY 11, 1964

Period Payable . 61 years MATURITY DATE FEBRUARY 11, 2025

Due Dates . 11th day of each month

BENEFICIARY . REVOCABLY TO MRS. LOUIS OLIVAS, WIFE, IF LIVING, OTHERWISE, TO RAFAEL H. OLIVAS, SON, AND ALICIA M. SOTO, AND ERIC ALBERT OLIVAS, DAUGHTERS AND SON AND ANY OTHER CHILDREN BORN OF THE MARRIAGE OF THE INSURED JO ELOISE OLIVAS AND THE INSURED (SHARE AND SHARE ALIKE) OR TO THE SURVIVORS OF SUCH OF THEM (See Direction for Settlement)

COMPANY'S

ENDORSEMENTS effective

NON PARTICIPATING INSURANCE

WAIVER OF PREMIUM DISABILITY INCOME BENEFIT

THE COMPANY WILL PAY the amount of Insurance to the Insured if living on the Maturity Date

THE COMPANY WILL PAY the Amount of Insurance to the then entitled Beneficiary immediately upon receipt (see [illegible]) of due proof of death of the Insured prior to that date, that if the age of the Insured stated above be zero and if such death occurs on or before the Insured reaches the age of six months the amount payable hereunder will be one fourth the Amount of Insurance

THE CONSIDERATION for this Policy is the payment of the Premium specified above on or before the delivery of this Policy and of a like premium on each Due Date after the Date of Policy until premiums have been paid for the period specified above or until the prior death of the Insured

THE PROVISIONS on the following pages are a part of this contract

IN WITNESS WHEREOF the Pacific Mutual Life Assurance Company has caused this policy to be executed at its Home Office in San Francisco, California as of the Date of Policy

Attest:

[illegible]
Secretary

[illegible]
President

Examined By [illegible]

Form 611 001

[illegible]
PACIFIC MUTUAL LIFE ASSURANCE COMPANY

THE CONTRACT. This policy, the application therefor, a copy of which is attached hereto and made a part hereof, and the endorsements hereon, constitute the entire contract between the parties. All statements made by the Insured in the application for this policy, in the absence of fraud, are deemed representations and not warranties, and no such statement shall avoid this Policy or be used in defense of a claim hereunder unless it is contained in the application. No alteration of this Policy and no waiver of any of its provisions shall be valid unless made in writing by the Company and signed by an officer of the Company.

CONTROL OF POLICY. During the lifetime of the Insured the right to exercise all privileges under this Policy, and to agree with the Company as to any changes in or amendments to this Policy, shall vest exclusively in the Insured, subject to the interests of the Beneficiary hereunder, except that if the Insured has designated an irrevocable Beneficiary, the consent of such Beneficiary shall be necessary to any such exercise, agreement, change or amendment. If the Insured is survived by a Beneficiary, the rights of the Insured hereunder shall vest in the Beneficiary as of the date of the Insured's death.

INCONTESTABILITY. This Policy shall be incontestable after it has been in force during the lifetime of the Insured for a period of two years from the Date of Policy, except for non-payment of premiums and except for any grace period granted. This provision shall not apply in the event of total disability, as hereinafter provided.

PREMIUM PAYMENTS. Except as hereinafter provided, all premiums on this Policy are hereby acknowledged. All premiums after the first premium shall be payable in advance either at the Home Office of the Company in San Francisco, California, or to an agent of the Company, upon delivery of a receipt signed by the President or Secretary of the Company and countersigned by such agent. If any premium is not paid on or before such premium date or within the grace period, as hereinafter provided, this Policy shall lapse as of the date to which premiums have been paid and all rights hereunder shall cease, except as to such extended insurance as may be granted.

ONE PREMIUM POLICY. If this Policy is a one premium policy, it may be surrendered to the Company at any time for a cash surrender value as provided in the table of cash surrender values set forth in this Policy. Upon surrender of this Policy, the Company shall pay the cash surrender value to the Insured or to the Beneficiary, as provided in the Policy.

If the premium for the whole or any part of a policy year in which the death of the Insured occurs has been paid for any period beyond the end of the policy year in which such death occurs, the Company shall pay to the Beneficiary the portion of such premium applicable to such period.

GRACE PERIOD. A grace period of thirty one days, without interest, will be allowed for the payment of any premium due after the first during which period the Policy will continue in force. If the Insured dies in said period the unpaid premium shall be deducted from the amount payable hereunder.

REINSTATEMENT. If this Policy lapses because of non-payment of premium and shall not have been surrendered for its cash surrender value, it may be reinstated at any time within five years after default in premiums, except upon presentation of evidence of insurability satisfactory to the Company, payment of all unpaid due premiums and payment or reinstatement of any policy loan which existed at the date of such default, with interest on such premiums from their respective Due Dates and on such loan to date of reinstatement at the rate of 5½% per year, compounded annually.

CHANGE OF PLAN. On any policy anniversary date while no premium is in default, this Policy may be exchanged without evidence of insurability for any participating form of policy which was currently issued by the Company on the Date of Policy on which premiums will be payable for at least the same length of time from the date of exchange as did the premiums for the policy surrendered for exchange, exclusive of premiums for additional benefits granted by riders. If any attached hereto. Such policy shall be

[illegible] the difference between the premium which would have been payable at the Policy Date for the plan of insurance then issued and the premium for the plan surrendered, computed on the basis of the Company's rates in force on the Policy Date of the Policy surrendered, plus the sum of any policy loan against the Policy surrendered and any unpaid loan interest thereon.

(2) The difference between the cash values of the new and the old policies for the number of years paid on the old policy, increased by 5½% of such difference.

The new policy will be issued on the basis of the same mortality and premium classification as the Policy surrendered. The new policy will be subject to the same [illegible] and will contain all of the same provisions, except as to additional benefits in event of death by accident or otherwise. If any such benefits are included in the Policy, there shall be payable with respect to the new policy the premiums applicable to the correct age.

MISSTATEMENT OF AGE. If the age of the Insured has been misstated, any amount payable or benefit which would be purchased by such premium paid would have purchased at the correct age.

SUICIDE. If the Insured shall commit suicide while sane or insane within two years from the beginning of the first policy year hereof, the liability of the Company under this Policy shall be limited to the premiums actually paid hereon, less any indebtedness.

CHANGE OF BENEFICIARY. While this Policy is in force, if the right to change the Beneficiary has been reserved, the Insured may from time to time change the Beneficiary by filing at the Home Office of the Company in San Francisco, California, a written request for such change. If the Company is to issue a new policy, the surrender of this Policy may be required. Each change of Beneficiary must refer specifically to this Policy. A change of Beneficiary may be made in the application for this Policy. No change of Beneficiary shall be binding upon the Company until it is recorded at the Home Office. The Company may accept and act upon any such change of Beneficiary that it believes to be genuine and to have been executed by the proper party hereto, and the Company shall not be responsible for the validity of any such change or for the sufficiency of the terms thereof or for the payment of any benefit made pursuant thereto before the written request of such beneficiary shall be received by the Company. The consent of any Beneficiary shall be necessary to any reinstatement or change of beneficiary.

If there be more than one Beneficiary, whether revocably or irrevocably designated, the interest of any Beneficiary who predeceases the Insured shall pass to the survivor or survivors unless otherwise directed by the Insured in writing and so endorsed by the Company on this Policy. If no designated beneficiary survives the Insured and if not otherwise provided, the proceeds of this Policy shall be payable in one sum to the executors, administrators or assigns of the Insured.

SETTLEMENT AND INDEBTEDNESS. Any sums payable by the Company under this Policy shall be payable at the Home Office in San Francisco, California. Any indebtedness to the Company on account of this Policy shall be deducted in any settlement hereunder. The Company may defer the granting of a cash surrender value or of a loan, except a loan for payment of premiums to itself, for the period provided by law [illegible] months after receipt of the application therefor.

PAYMENT. The surrender value on this policy shall not be less than the amount payable according to the Commissioners Reserve Valuation Method. The interest and net single premium rates to be used shall be based on the Commissioners 1941 Standard Ordinary Table of Mortality with interest at the rate of 3½% per annum and the Policy Anniversary on which the Surrender Charge is to be shown below the table of non-forfeiture values and at the rate of 2½% thereafter.

ASSIGNMENT. No assignment of this Policy shall be binding upon the Company until a copy thereof is filed with the Company at its Home Office in San Francisco, California. The Company shall not be responsible for the validity of any assignment and may assume that a[illegible] is subject to prior assignments not filed at the

in Event of

TOTAL AND PERMANENT DISABILITY

Upon receipt at the Home Office in San Francisco, California, in accordance with the conditions herein after stated, of written notice of claim of disability and due proof that the insured has become totally and permanently disabled by bodily injury or disease original ing after the effective date of this rider, and as defined herein, the Company will waive the payment of all premiums falling due under the policy after the commencement and during the continuance of such total and permanent disability, provided, however, that no premium shall be waived the due date of which is more than six months prior to the date of receipt at the Home Office in San Francisco, California, of written notice and proof of claim hereunder. The amount payable under any settlement will not be reduced by any premiums waived under this rider and the dividend, if any, and nonforfeiture values, if any, will be the same as if the premiums so waived had been paid in cash.

Consideration — The annual premium for this rider, or the corresponding semi-annual, quarterly or monthly premium, as the case may be, is included in the premium stated on the face of the policy and is payable at the times and in the manner there specified. Any premium on the policy falling due on or after the termination of this rider shall automatically be reduced by the premium for this rider.

Definition of Total and Permanent Disability — Disability shall be deemed to be total when the insured is prevented thereby from engaging in any occupation or from performing any work for compensation or profit. Such total disability shall be presumed to be permanent (but only for the purpose of determining the commencement of liability hereunder) when it is present and has existed continuously as above set forth for not less than four consecutive months. Without prejudice to any other cause of disability, the entire and irrecoverable loss of the sight of both eyes or the total and permanent loss by removal or disease of the use of both hands or both feet or of one hand and one foot shall be considered as total and permanent disability within the meaning hereof.

Notice and Proof of Claim — Written notice of claim and due proof of total and permanent disability of the insured must be presented to the Company at its Home Office in San Francisco, California, (a) while the insured is living and during the continuance of total and permanent disability, and (b) before the policy anniversary on which the age of the insured at nearest birthday is sixty if a male life or fifty-five if a female life, provided, however, that failure to give such notice and proof within such times shall not invalidate any such claim if it shall be shown that such notice and proof were given as soon as was reasonably possible. In case any premium on the policy is in default before receipt at the Home Office in San Francisco, California, of written notice and due proof of claim hereunder, disability benefits shall be allowed only if such notice and proof are received within one year of the due date of the first premium in default and if the total disability for which claim is made commenced prior to the due date of such first premium in default or subsequent to the due date of such first premium in default but within the grace period allowed by the policy for payment of such premium. In either event, no premium shall be waived the due date of which is more than six months prior to receipt of such notice and proof and the Owner shall be liable for any premiums in default before such six months period, with interest at 5½% per annum.

As a condition precedent to approval of claim the Company shall have the right and opportunity to have one or more physicians designated by it examine the insured when and so often as it may reasonably require.

Proof of Continuance of Disability and Recovery from Disability — Even though proof of disability has been accepted by the Company as satisfactory, the Company at any time may require due proof of the continuance of such disability and may require the insured to submit to an examination by one or more physicians designated by the Company, however, after such disability shall have continued for two full years, the Company will not require such proof or examination more often than once in each subsequent year. If, on request, such proof is not furnished or the insured fails to submit to such an examination or if the insured so far recovers as to be able to engage in any occupation or to perform any work for compensation or profit, then all waiver of premium benefits shall cease and all premiums thereafter falling due must be paid as originally provided in the policy. The Owner agrees to give immediate notice to the Company if and when the insured recovers from such disability.

Exclusions — The disability benefits provided herein shall not be granted if the disability results (1) from intentional self inflicted injury, (2) from any act directly or indirectly due to war, declared or undeclared, or (3) from military, naval or air service for any country at war, declared or undeclared.

Contestability — In accordance with the exception set forth in the incontestable clause of the policy, the Company may contest liability under this rider at any time and for any cause, inclusive of causes relating to the validity of the policy as a contract at its inception.

Termination — The disability rider shall terminate (a) on the policy anniversary on or next the age of the insured at nearest birthday is sixty if a male life or fifty-five if a female life or (b) when any premium on the rider or on the policy to which it is attached is not paid when due or within the days of grace for payment of such premium, or it may be terminated on the due date of any premium on the policy by written request of the Owner accompanied by the policy for endorsement.

Effective Date — The effective date of this rider is the date of the policy to which it is attached.

THE PACIFIC NATIONAL LIFE ASSURANCE COMPANY

Secretary

President

Form WP 6 61

INCOME SECURITY

ATTACHED TO AND MADE A PART OF POLICY NO. 1433855

Partially corrected effective 12-11-67.
Change made effective 12-11-67.

MONTHLY INCOME $ ~~444.00~~ $79.20

RIDER DATE FEBRUARY 11, 1964

TERMINATION DATE FEBRUARY 11, 1983

Secretary

In accordance with the provisions of this rider the Company will pay the monthly income benefit upon receipt of due proof of death of the insured occurring before the end of the income security period.

MONTHLY INCOME STARTS The Company will pay a monthly income commencing as of the date of death of the insured and payable on the same day of each month thereafter and terminating with the payment on the monthly payment date immediately before the end of the income protection period. The monthly income payable shall be the amount shown above.

INCOME SECURITY PERIOD The income security period shall begin on the rider date and end on the termination date hereof.

BENEFICIARY PROVISION As each payment of the monthly income becomes due it shall be made to the entitled beneficiary who is then entitled, under the provisions of the policy, to receive proceeds payable because of the death of the insured. If the entitled beneficiary under the provisions of the policy is not an individual receiving payment in his or her own right, the commuted value of the payments to become due to such beneficiary under this rider shall be paid in one sum.

ASSIGNMENT OF COMMUTATION No beneficiary shall have the right to assign or commute payments under this rider unless such right is given to such beneficiary in writing and recorded at the Head Operating Office of the Company.

PAYMENT TO CREDITORS If a creditor beneficiary or assignee has an interest in the proceeds payable under this rider, such interest shall be deducted from the commuted value and paid in one sum. Any remainder shall be applied to pay the monthly income until such remainder, with interest at 2½% compounded annually, shall be paid in full.

INCONTESTABILITY AND SUICIDE In applying the provisions of the policy relating to incontestability and suicide to this rider, the date of policy shall be the rider date.

AUTOMATIC TERMINATION This rider shall automatically terminate (1) if any premium remains unpaid after the end of the grace period, (2) if the policy is surrendered or continued under a non-forfeiture provision, if any, (3) if the policy becomes paid up or matures or terminates, or (4) at the end of the income security period.

PRIVILEGE OF CONTINUATION If this policy, exclusive of riders, provides term insurance which is converted this rider shall be continued as a part of the new policy.

CONVERSION PRIVILEGE Upon written request made while this rider is in force, this rider may be converted without evidence of insurability to any plan of age participating whole life or endowment insurance of the same mortality classification as this rider written by the Company on the date of the new policy. The premium for the new policy shall be based on the premium rate in use by the Company for the plan selected and for the age nearest birthday of the insured at the date of the new policy. Evidence of insurability of the insured satisfactory to the Company must be submitted before any disability benefits applying to this rider shall be included as a part of the new policy.

Conversion As of Rider Date On request of the owner the new policy may be dated as of the rider date if the conversion privilege is exercised within 5 years from that date. The amount of insurance under the new policy must not be less than the minimum required by the Company for the plan selected, nor greater than the commuted value of the remaining monthly income of this rider at the date of conversion. The conversion shall be subject to payment to the Company in cash of the reserve of the new policy at the date of conversion increased by 5½%.

Conversion At Attained Age At any time prior to the insured having attained age 65, nearest birthday, and while this rider is in force it may be exchanged for a new policy dated as of the date of conversion. The amount of insurance of the new policy must not be less than the minimum required by the Company for the plan selected nor greater than the commuted value of the remaining monthly income of this rider at the date of conversion.

COMMUTED VALUE The term "commuted value" as used in this rider shall mean the present value of the monthly income thereafter payable computed by discounting such income with interest at 2½% compounded annually. The following table shows the commuted value for each $10 per month of monthly income remaining to be paid for the number of policy years and months shown.

Yrs	Months											
	0	1	2	3	4	5	6	7	8	9	10	11
*35	2815	—	—	—	—	—	—	—	—	—	—	—
34	2764	2768	2772	2777	2781	2785	2789	2794	2798	2802	2806	2811
33	2711	2716	2720	2724	2729	2733	2738	2742	2746	2751	2755	2759
32	2657	2662	2666	2671	2675	2680	2684	2689	2692	2698	2703	2707
31	2602	2607	2611	2616	2621	2625	2630	2634	2639	2644	2648	2653
30	2546	2550	2555	2560	2565	2569	2574	2579	2583	2588	2593	2597
29	2488	2492	2497	2502	2507	2512	2517	2522	2526	2531	2536	2541
28	2428	2433	2438	2443	2448	2453	2458	2463	2468	2473	2478	2483
27	2367	2372	2377	2383	2388	2393	2398	2403	2408	2413	2418	2423
26	2305	2310	2315	2321	2326	2331	2336	2341	2347	2352	2357	2362
25	2241	2246	2251	2257	2262	2268	2273	2278	2284	2289	2294	2299
24	2175	2181	2186	2192	2197	2203	2208	2214	2219	2225	2230	2235
23	2108	2114	2119	2125	2131	2136	2142	2147	2153	2159	2164	2170
22	2039	2045	2051	2056	2062	2068	2074	2079	2085	2091	2097	2102
21	1968	1974	1980	1986	1992	1998	2004	2010	2016	2021	2027	2033
20	1896	1902	1908	1914	1920	1926	1932	1938	1944	1950	1956	1962
19	1822	1828	1834	1840	1847	1853	1859	1865	1871	1878	1884	1890
18	1746	1752	1758	1765	1771	1778	1784	1790	1797	1803	1809	1815
17	1668	1674	1681	1687	1694	1700	1707	1713	1720	1726	1733	1739
16	1588	1594	1601	1608	1615	1621	1628	1635	1641	1648	1655	1661
15	1506	1513	1520	1527	1533	1540	1547	1554	1561	1567	1574	1581
14	1422	1429	1436	1443	1450	1457	1464	1471	1478	1485	1492	1499
13	1336	1343	1350	1357	1365	1372	1379	1386	1393	1401	1408	1415
12	1248	1255	1262	1270	1277	1285	1292	1299	1307	1314	1321	1328
11	1157	1165	1172	1180	1188	1195	1203	1210	1218	1225	1233	1240
10	1064	1072	1080	1088	1096	1103	1111	1119	1126	1134	1142	1149
9	969	977	985	993	1001	1009	1017	1025	1033	1041	1049	1057
8	873	880	888	897	905	913	921	929	937	945	953	961
7	773	781	789	797	806	814	822	831	839	847	856	864
6	670	679	687	696	704	713	721	730	738	747	755	764
5	565	574	583	591	600	609	618	627	635	644	653	661
4	458	467	476	485	494	503	512	521	529	538	547	556
3	347	357	366	375	384	394	403	412	421	430	439	448
2	234	244	253	263	272	282	291	301	310	319	329	338
1	119	128	138	148	158	167	177	187	196	206	215	225
0	—	10	20	30	40	50	60	70	79	89	99	109

*Commuted values for longer periods will be furnished upon request

CANCELLATION Upon written request by the owner of the policy, this rider may be cancelled on any premium due date

NON PARTICIPATING This rider does not participate in the profits or surplus of the Company

CONSIDERATION This rider is issued in consideration of the application for this rider, a copy of which is attached to the policy, and payment of the charge for this rider. The charge for this rider is included in the premium stated on the face of the policy and is payable under the same conditions, except that such charge shall cease to be payable whenever this rider terminates

Signed for the Company at its Home Office as of the rider date

ATTEST

Secretary

President

Direction for Settlement

To be attached to and made a part of Policy No [illegible]

on the life of HORIS OSVAL [illegible] **, the Insured**

PACIFIC NATIONAL LIFE ASSURANCE COMPANY, hereinafter called the Company, is hereby requested to pay any proceeds due under the provisions of the above Policy on the Settlement Date to the beneficiaries designated below in accordance with and subject to the provisions (including the general Settlement Provisions) of this Direction for Settlement and the Policy. All powers herein granted, obligations and discretions for settlement under the Policy are vested, and the right to exercise them is reserved, by the said Company to make further changes in such designations and directions from time to time during the life of the Insured without the consent of any beneficiary, subject to the terms of the Policy. Unless otherwise indicated below, the terms "Proceeds" and "Settlement Date" shall be as defined in the General Settlement Provisions.

Beneficiary Schedule

Classes of Beneficiaries in order of Priority	Designation of Beneficiary		Date of Birth		
	Name	Relationship	Day	Month	Year
Primary Beneficiary	BEVERLY JO [illegible]	WIFE	6	MARCH	1937
Contingent Beneficiary	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	[illegible]	DAUGHTER	13	JULY	1962
	ERIC [illegible]	SON	18	SEPT.	1963
	AND ANY CHILD OR CHILDREN BORN OF THE MARRIAGE				
	(OTHER THAN TWINS ABOVE)				

Payment of Proceeds

The amount of the Proceeds is to be determined under the terms of the Policy and no provision of this Direction for Settlement shall be construed as an agreement to pay a greater amount. Subject to the terms of the Policy and the provisions hereof, the Proceeds shall be paid to the above designated beneficiaries as follows:

Primary Beneficiary: Proceeds to be held by the Company under Option 1, with interest payable each annually for a period of 20 years and then paid in one sum.

While the proceeds are held under Option 1, the beneficiary shall have the right of withdrawal and the right of Election of Other Options.

Contingent Beneficiary: In one sum.

GENERAL SETTLEMENT PROVISIONS

Article I. References and Definitions

(a) *Policy.* The term "Policy" as used herein means and includes collectively all of the policies listed by number on the Declaration for Settlement.

(b) *Proceeds.* The terms "Proceeds" as used herein mean the sums net amount payable on the Settlement Date under the policies and subject to the Divisions for Settlement. Whether or not by any date subsequent to the Settlement Date the terms "Proceeds" shall mean the then present value of any unpaid instalments which are uncommutable to be paid under the provisions of the Divisions for Settlement.

(c) *Settlement Date.* The term "Settlement Date" as used herein means the date of the first payment made under any one of the policies mentioned in the Declaration for Settlement.

(d) *Option.* The term "Option" as used herein means any of the settlement options set forth in the applicable Divisions for Settlement of the Policy; any person having a right to elect from time to time any of the Policy payment options is referred to as the "payee"; and the word "elect" or the word selected" as used herein in connection with the exercise of the payee's right to elect any of the applicable options shall include a change of election.

(e) *Commutation of Instalments.* The terms "commute" and "commutation" mean the "sale" or "purchase" by the Company of the right to receive any of the instalments payable under any option.

Article II. Beneficiaries and Priority

(a) *Priority of Payment.* Payments under the Settlement Provisions of this Policy shall be made to the beneficiaries in the order designated under the provisions of the Declaration for Settlement of this policy, or any change or changes of the same, or in the absence of such designation or change or changes, then to the beneficiaries of a prior class of beneficiaries.

(b) *Plural Beneficiaries.* If a class of beneficiaries (e.g. Primary Beneficiary, Contingent Beneficiary, etc.) consists of more than one person, the following shall apply with respect to payments of the proceeds of the Divisions for Settlement:

1. Each payment of Proceeds, whether a net sum or instalments payable under the terms of the Settlement Options, shall be made to the then living members of the class share and share alike.
2. If payment of the Proceeds is to be made to the members of a class "per capita and not per stirpes" and without representation, then on the death of the last surviving member of a prior class of beneficiaries, the Company, by the Proceeds shall be apportioned to the then living members of the class of beneficiaries entitled to receive payment, share and share alike and each member of such class shall be separately applied for his benefit under the Settlement Options. If the death of any such beneficiary shall occur prior to the receipt of a full share, the unpaid portion of such share of all to be apportioned to the other living members of the class of such beneficiary in the same manner, share and share alike and each member of such class shall be separately applied for his benefit under the Settlement Options. If the death of any such beneficiary shall occur prior to the receipt of a full share, the unpaid portion of such share of all to be apportioned to the other living members of the class of such beneficiary in the same manner, share and share alike and each member of such class shall be separately applied for his benefit under the Settlement Options. If the death of any such beneficiary shall occur prior to the receipt of a full share, the unpaid portion of such share of all to be apportioned to the other living members of the class of such beneficiary in the same manner, share and share alike and each member of such class shall be separately applied for his benefit under the Settlement Options.

(c) *Children.* Where the terms "Children" or "children" are used herein with reference to a class, all children, whether only brothers and sisters or living descendants of deceased children, shall not be considered members of such class unless otherwise indicated.

(d) *Children by Representation.* If the words "Children by Representation" or "per stirpes" are used herein with reference to a class of beneficiaries in the Declaration for Settlement, then on the death of any person entitled to receive any part of the said sum hereinbefore shall have the following effect. If a beneficiary (other than a child by representation of such child) is not living at a time when he or she would otherwise be entitled to payment hereunder, and if any child of his or hers is then living or has been living at the time of the death of such beneficiary, such child or children shall be entitled to receive the payment which such beneficiary would have been entitled to receive if living at the time of the death of the insured. If no child of such beneficiary is living at the time of the death of the insured, then the payment which such beneficiary would have been entitled to receive if living at the time of the death of the insured shall be paid to the children of such beneficiary who are living at the time of the death of the insured.

(e) *Relationship.* The terms "husband," "wife," "son," "daughter," "father," "mother," "brother," "sister," "grandchild," "grandparent," "nephew," "niece," "cousin," "uncle," "aunt," "son-in-law," "daughter-in-law," "father-in-law," "mother-in-law," "brother-in-law," "sister-in-law

(This form is to be used for Policy [illegible])

Policy No. 137501 RHODES

I (We) the undersigned, hereby amending (not) application to the PACIFIC NATIONAL LIFE ASSURANCE COMPANY, dated Dec 15 (Date of Application), 19 61 as follows

Plan of Policy — Sum Insured $

Original Policy Date — Annual Premium $

I (We) hereby apply for the Following

Plan of Policy applied for

Sum Insured $

Premium $

Date of changed Policy if other than Original Policy date

Commuted Value to be paid at the option of the primary or contingent beneficiary.

I (We) hereby agree that these changes shall be an amendment to and form part of the said application and of the policy issued thereunder, if any, and that they shall be binding on any person who shall have or claim any interest under such policy.

I (We) further agree that, if the policy is reissued, the contestable clause as described in such policy shall be effective commencing from the new policy date.

Dated at Phoenix, Arizona this 29 day of January, 19 62

Witness to Signature of Insured — Signature of Insured

Signature of Agent — Signature of Owner if other than the Insured

[illegible] of the insured

POLICY LOANS

CASH LOANS. After this Policy has a cash value, and while it is in force, except as extended term insurance under the non-forfeiture options, the Company will lend on the sole security and upon written assignment of this Policy, a sum not exceeding the cash value at the end of the current policy year as shown in the Table of Non-Forfeiture Values, less any existing indebtedness on account of this Policy and accrued interest thereon. There shall be deducted from the proceeds of such loan interest to the end of the current year and any unpaid premium for such year.

AUTOMATIC PREMIUM LOANS. Upon request made in the application or upon subsequent written request received by the Company at its Home Office in San Francisco, California, prior to the expiration of the grace period, and until a written revocation of such request has been received at the Home Office in San Francisco, California, any premium which remains unpaid at the end of the grace period will automatically be paid by a loan granted by the Company under the terms and conditions of this Policy. Loans granted. Provided, however, if the loan value then available is insufficient to cover the entire amount of any premium due when this provision would otherwise be operative, no automatic loan shall be made and the premium shall be in default.

INTEREST AND REPAYMENT. Interest shall be at the rate of 5½% a year, payable in advance; unpaid interest shall be added to the loan indebtedness and bear interest on the same basis. Any loan may be repaid in whole or in part to any Election of the Insured and prior to maturity of the Policy, provided that a loan which exists at expiration of the grace period may not thereafter be repaid unless this Policy be reinstated. Failure to repay any loan or to pay interest, shall not void the Policy unless the total indebtedness shall equal or exceed the loan value at the time of such failure nor until 31 days after notice shall have been mailed to the Insured and to any assignee of record at the Home Office in San Francisco, California, at their respective last known addresses.

NON-FORFEITURE VALUES

BASIS OF NON-FORFEITURE VALUES. The cash values on any policy anniversary are calculated by the Standard Non-Forfeiture Value Method. The non-forfeiture factors per $1000 of Amount of Insurance are, when required by law, on file with the Insurance Department of the State in which the Policy is delivered. All such calculations are based upon the Commissioner's 1941 Standard Ordinary Table of Mortality and an interest rate of 3½% until the "Policy Anniversary on Which Interest Rate Changes," as shown below the table of non-forfeiture values, and 3½% thereafter, provided, however, that in calculating extended term insurance and pure endowment, the rate of mortality used is 130% of the rates according to said table. These calculations are also based upon the assumption that deaths occur at the end of the policy year. The amount of paid-up insurance, the amount of pure endowment and the periods of extended term insurance are such as the corresponding cash values will provide at the then attained age, nearest birthday, of the Insured. The non-forfeiture values are no less than the minimum required by the State in which the Policy is delivered.

TABLE OF NON-FORFEITURE VALUES. Values given in the Table of Non-Forfeiture Values are for a policy free of indebtedness and for lapses occurring with premiums paid for completed policy years, proportionate allowance being made in determining values from said table for the fractional part of a policy year's premium that has been paid. Values for policy years beyond those shown in said table will be furnished upon request.

NON-FORFEITURE OPTIONS. Any one of the following non-forfeiture options, the values of which are stated in the Table of Non-Forfeiture Values, may be elected by written request received by the Company at its Home Office in San Francisco, California, not later than sixty days after the Due Date of any premium in default and prior to the death of the Insured.

Cash Value. The cash value of the Policy will be paid upon surrender of the Policy, or

Paid-up Insurance. This Policy will be continued from the Due Date of the premium in default for a reduced amount of paid-up insurance payable at the same time and subject to the same conditions as this Policy, or

Extended Term Insurance. The insurance hereunder will be continued as extended term insurance from the Due Date of the premium in default. The term insurance shall not extend beyond the Maturity Date of this Policy. If the value used to purchase extended term insurance is more than enough to continue this Policy to its Maturity Date, the excess shall be applied to purchase a pure endowment payable in any sum on the Maturity Date provided the Insured be then living.

Automatic Option. If no election is made within sixty days after the Due Date of a premium in default, the Policy will be automatically continued as extended term insurance.

If at the date of lapse the premiums have been paid to the end of the policy year for which a cash value is first shown in the Table of Non-Forfeiture Values or if this Policy shall have become paid up by completion of all premium payments, the paid up insurance or extended term insurance under which this Policy is continued may be surrendered at any time for an amount equal to the net single premium at the attained age of the Insured for the remaining benefits under such insurance, computed on the same mortality and interest assumptions as set forth above. Provided, however, that if the date of surrender is within the thirty day period immediately following a policy anniversary, such amount will not be less than the amount of net single premium on such policy anniversary.

EFFECT OF INDEBTEDNESS ON NON-FORFEITURE OPTIONS. Any indebtedness under this Policy shall be deducted from the cash surrender value otherwise payable and from the amount of insurance extended under the extended insurance option. The amount of paid up insurance and the term of extended insurance and amount of pure endowment, if any, shall be reduced to such as the cash surrender value less indebtedness will provide at the attained age of the Insured.

TABLE OF [illegible] SINGLE VALUES FOR EACH $1,000 AMOUNT OF INSURANCE

C. V., Paid Up Insurance and Pure . Commuted Values for an Amount of Insurance greater or less than $1000 will be proportionately increased or decreased. The periods of Extended Term Insurance will be the same for any Amount of Insurance. Age refers to age of Insured on the Date of Policy as shown on the face of the Policy. Pure endowment values, where available, appear in the column headed "Days" opposite or below the $ sign.

The "Age" below refers to age of ured on the date of Policy as shown on the face of the Policy. The "Policy Anniversary on Which Interest Rate Changes" is shown opposite the "Age."

Age	Policy Anniversary on Which Interest Rate Changes
15	30
16	30
17	29
18	29
19	28
20	28
21	27
22	27
23	26

Age	Policy Anniversary on Which Interest Rate Changes
24	26
25	25
26	25
27	25
28	25
29	25
30	25
31	25
32	25

Number of case: M2388 — Alexis Owen Rose

Date of birth

Occupation: 2410 W. 70th Place, Scottsdale, Arizona 85257

I hereby request an order directing that I be granted Counsel at Public Expense. This is to Execute Writ of Habeas Corpus, with Motion for Bail and Appropriate Petition, Leave and Affidavit. Bail Pending Trial in the Superior Court of Maricopa County, Arizona in Case Number [illegible]

Application for Counsel at Public Expense

1. Are you employed? No
   - Are you employed full-time? No
   - Do you have any other employment? No
2. Are you receiving welfare? No
3. Do you own cash, or do you have money in a checking or savings account? No
   If yes, state total amount: [illegible]
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property? No
   If yes, describe and state value: MAY BECOME A FUTURE CLIENTS REPRESENTATIVE FOR STATE FOR A TAX (Income Taxation) 8/29/66
5. List persons who are dependent upon you for support, state your relationship to them, and indicate how much you contribute toward their support each month.
   (1) Name: N/A — Relationship: N/A — No
   (2) Name: — Relationship: — No
6. Do you have any debts or monthly obligations? No
   If yes, state to whom and how much: [illegible]
7. Do you have any bills or debts? Yes — Amount: 135 [illegible]
   Purpose for which obligated: [illegible]
8. List your last two employers.

Name and address of employer	Kind of work	Date employed	Salary or wages per week
Self	Was Sole Support	1966	24 per week
	[illegible]		
	[illegible]		
	STATE ATTORNEY GEN. [illegible]	[illegible]	[illegible]
	PHOENIX POLICE [illegible]	[illegible]	[illegible]

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date) December 28, 1967

X [illegible]
Signature of petitioner

Edward O. Shields, Old
Attorney

X
Signature of attorney

Form 4 [illegible]

Writ

[illegible]

Page 3

PACIFIC N IONAL LIFE ASSUR NCE CO
HOME OFFICE - SAN FRANCISCO, CALIF.

APPLICATION

To be used for conversion of term insurance, policies issued under a guaranteed insurability benefit, or other changes of plan not requiring evidence of insurability.

I hereby apply for the following:

Name: MORIS ORVAL RICOES

Address: 2612 N. 70th Place

Scottsdale, Arizona 85257

Age: 33

Plan of Policy applied for: Executive Whole Life with Waiver of Premium and Automatic Premium Lo
Remaining Term to be continued on Original Base Policy.

Sum Insured: $ 10,000

Annual Premium: $ 194.90

Policy date: December 31, 1967

Beneficiary: Same as Settlement Option in Policies

Dated at Phoenix, Arizona **This** 21st **day of** December **19** 67

Signature of Insured

Signature of Owner if other than the Insured

...ance with the Company at San Francisco, ...

SECRETARY

PRESIDENT

WIB

© 67 (1/68)

RECEIPT OF EARLY THE OFFICIAL Receipt of the ... upon the payment of the ... Option 3 of the ... option of a different plan, ... of the ... of the Home Office in San Francisco, California, ... Policy ...

WAIVER OF PREMIUM BENEFIT

FOR

ADDITIONAL INSURANCE GIVEN A PAID-UP POLICY AND PAYABLE AS A MONTHLY INCOME TO THE END OF THE PERIOD OR UPON ELECTION AS A SINGLE PAYMENT, IF THE INSURED'S WIFE'S DEATH OCCURS DURING THE PERIOD

The Company agrees, subject to the terms and conditions of this Provision and of the policy to which it is attached, to pay the full premium on the policy specified on page 3 of this Provision, which becomes due on the policy anniversary nearest the insured's 65th birthday, if the insured's wife named on page 3 of this Provision shall die before such anniversary and this Provision and the policy are in force.

1. For each month of October in the amount of $

   a. $1,000 payable monthly on one term

   b. If the wife has survived age 50, an monthly income of $50 beginning with the date of the insured's wife's death and payable at monthly intervals until the end of the month in which the insured's wife would have attained age 70

2. If a Children's Benefit is attached to the policy, a monthly income for each child as fully paid up term insurance to the child's 19th birthday.

The Date of Issue of this Provision, which is the date the Term Period begins, and the Term Period ends are as specified on page 3 of this Provision.

The Benefits of this Provision are payable in addition to any amounts which may be payable under the policy.

This Provision and any and all of the policy to which it is attached are subject to all of the provisions of the policy which are not inconsistent with or specifically modified by the provisions of this Provision, including those applicable to the Incontestability and Suicide provisions.

Whenever premiums are waived under the policy in accordance with a Disability Benefit Provision, premiums shall be waived under this Provision.

Payment of Proceeds

Any proceeds payable under this Provision on account of the death of the insured's wife shall be paid to the insured, if living, otherwise to the estate of the insured's wife, unless otherwise provided. The payee may elect to receive the commuted value of such monthly income in one sum. The commuted value shall be computed by discounting the monthly income payable at 3% interest, compounded annually.

Incontestability, Suicide, Reinstatement and Age

As applied to this Provision, the provisions in the policy relating to incontestability and suicide, premiums of the policy shall be measured from the date of issue of this Provision and shall apply to the insured's wife as well as the insured and the misstatement of age provision of the policy shall apply only to the insured's wife.

Exchange of Policy for a New Policy

This Provision may be exchanged as a part of any policy, or part of a term policy for which this policy is exchanged if

a. The date of issue of the new policy is the same as this policy or an anniversary of this policy, and

b. The new policy and the Provision are in the same premium class, and

c. Premiums under the new policy are payable at least to the end of the Term Period of this Provision, and

d. The Sum Insured of the new policy is the same as the policy

Reinstatement

Reinstatement of the policy while including this Provision will require the submission to the Home Office of evidence satisfactory to the Company of the insurability of the insured's wife covered under this Provision, in addition to the other requirements stated in the policy.

Benefits After Death of Insured

In the event of the [illegible] of which the policy and this Benefit are in force, in place of all other benefits under the Company will issue to the insured's wife a paid-up term life insurance policy in the amount of $1,000 from insured for each unit of this Benefit shown on page 3, which will expire on the policy anniversary following the insured's wife's 65th birthday.

Termination

This Provision will terminate without value, subject to the "Exchange of Policy for a New Policy" Provision, upon the earliest of

a. The lapse, exchange or termination of the policy, or

b. The payment or application of the surrender value of the policy, or

c. The due date of the premium next following receipt at the Company's Home Office of a request for termination, save by written notice and presentation of the policy for adjustment, or

d. The date the policy becomes fully paid up, or

e. The end of the Term Period

Signed for the Company at San Francisco, California

SECRETARY

PRESIDENT

WVP

G-87 (1/69)

ELECTION OF SINGLE SUM OPTION. Election of commutation of monthly income payments to be in writing, filed at the Home Office in San Francisco, California. An election [illegible] payable only under Option 3 or for the number of months for which payments remain to be payable under Option 4.